

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MOTION PROCEEDINGS
BEFORE THE HONORABLE H. BRUCE GUYTON

July 8, 2019
10:03 a.m. to 10:49 a.m.

APPEARANCES:

FOR THE PLAINTIFF: YASAMIN PARSAFAR, ESQUIRE
Sheppard, Mullin, Richter & Hampton
Four Embarcadero Center
17th Floor
San Francisco, California 94111

THOMAS S. SCOTT, JR., ESQUIRE
Scott & Cain
550 West Main Street
Suite 601
Knoxville, Tennessee 37902

FOR THE DEFENDANT: W. KYLE CARPENTER, ESQUIRE
J. CHADWICK HATMAKER, ESQUIRE
Woolf, McClane, Bright,
Allen & Carpenter
900 South Gay Street
Suite 900
Knoxville, Tennessee 37902

(Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.)

REPORTED BY:

Rebekah M. Lockwood, RMR, CRR
Official Court Reporter
(865) 210-6698
P.O. Box 1823
Knoxville, Tennessee 37901-1823
Document 158-5 Filed 08/12/19 Page

APPEARANCES (CONTINUED):

FOR THE DEFENDANT:

ROBERT E. PITTS, ESQUIRE
JACOB G. HORTON, ESQUIRE
RAYMOND E. STEPHENS, ESQUIRE
Pitts & Lake PC
1319 Old Weisgarber Road
Knoxville, Tennessee 37909

Rebekah M. Lockwood, RMR, CRR
Official Court Reporter
(865) 210-6698
P.O. Box 1823
Knoxville, Tennessee 37901-1823

1 Would you like to do one issue at a time, or should I
2 keep going?

3 THE COURT: Well, I guess my question is, if you have
4 an outstanding request on every interrogatory 1 through 19 for
5 a supplement?

6 MS. PARSAFAR: Yes, Your Honor.

7 THE COURT: All right. Okay. So your position is
8 all the same?

9 MS. PARSAFAR: Yes.

10 THE COURT: Okay. What's next?

11 MS. PARSAFAR: The next issue is, the Court's May 17
12 order states that defendant represents that it produced
13 detailed summaries of its assessment revenues from its business
14 dealings in multiple states and that it will also produce
15 summaries of cost information once said summaries has been
16 created. Once plaintiff has received these documents, if it is
17 unsatisfied, it may contact the court to set a hearing.

18 That is the second issue. First, this order came out
19 two months ago. We have not received the cost summaries.
20 Second, the revenue summaries that they did produce were
21 reviewed by our expert who determined that they were
22 insufficient and inaccurate. And that is in the expert report,
23 which I have brought along, if you would like to see a copy of
24 it.

25 May I approach?

UNITED STATES DISTRICT COURT

1 THE COURT: Yes.

2 MS. PARSAFAR: If you turn to Page 4. At the top
3 left, it says Page 4 of 14. It says Fulcrum, which is our
4 expert witness on damages, has reason to believe that the
5 documents available to --

6 THE COURT: Hold on, hold on. Let me catch up with
7 you. Okay. I'm with you. Go ahead.

8 MS. PARSAFAR: So under Section A, Fulcrum has reason
9 to believe that the documents available to Fulcrum and, hence,
10 the amounts contained in the above heading and tables within
11 the section are incomplete. Fulcrum identified multiple
12 invoices that were not included in the WIN prepared summaries.
13 See Exhibit 1 for a summary of such identified concerns based
14 on WIN invoices. The uncertainty regarding the completeness of
15 WIN's records and productions is made worse by WIN providing
16 its accounting software QuickBooks file that would likely
17 clarify the uncertainties but refusing to provide the password
18 for this file that would allow its actual use. This failure to
19 provide this relevant contemporaneous accounting file also
20 affects WIN's cost analysis, which is discussed in
21 Section 2(b).

22 Now, Your Honor ordered that WIN would not have to
23 produce the QuickBooks file which would allow our expert to
24 obtain the information that he needs because WIN represented
25 that it has passwords and links to live bank accounts. Those

UNITED STATES DISTRICT COURT

1 issues would be covered under the protective order in this case
2 if WIN were to designate it highly confidential. But if
3 there's some reason not to trust the law firm, what WIN could
4 do, which we propose, is provide versions of those QuickBooks
5 files with the links and passwords redacted, so that our expert
6 could have the information they need to fully analyze WIN's
7 revenues and also costs. We still have not received the cost
8 summaries, which our expert also noted in his report, at the
9 top left, Page 3 of 14.

10 The bottom of the page says WIN should not be allowed
11 to deduct any costs from the disgorged revenues because WIN
12 failed to produce contemporaneous accounting records to
13 substantiate its costs.

14 Again, Your Honor's order came out on May 17th for
15 WIN to produce its costs summaries. It's been two months. We
16 have not received them. And according to our expert who has
17 reviewed many documents and invoices that we provided from WIN,
18 their summaries are simply not accurate.

19 Can I continue?

20 THE COURT: Yes.

21 MS. PARSAFAR: The third issue, Your Honor, is that
22 your May 17 order required WIN to supplement its responses to
23 our second set of interrogatories and our second and third set
24 of RFPs. And the order said that WIN should respond by
25 identifying responsive documents by Bates number.

UNITED STATES DISTRICT COURT

1 || **CERTIFICATE OF REPORTER**

2 | STATE OF TENNESSEE

3 COUNTY OF KNOX

4 I, Rebekah M. Lockwood, RMR, CRR, do hereby certify
5 that I was authorized to and did stenographically report the
6 foregoing proceedings; and that the foregoing pages constitute
7 a true and complete computer-aided transcription of my original
8 stenographic notes to the best of my knowledge, skill, and
9 ability.

10 I further certify that I am not a relative, employee,
11 attorney, or counsel of any of the parties, nor am I a relative
12 or employee of any of the parties' attorneys or counsel
13 connected with the action, nor am I financially interested in
14 the action.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Knoxville, Knox County, Tennessee this 12th day of July, 2019.

Rebekah Lockwood
REBEKAH M. LOCKWOOD, RPR, CRR
Official Court Reporter
United States District Court
Eastern District of Tennessee